

## **REMARKS**

Reconsideration of this application and the rejection of claims 1-25 are respectfully requested. Applicant has attempted to address every objection and ground for rejection in the Office Action dated October 19, 2004 and believes the application is now in condition for allowance. The claims have been amended to more clearly describe the present invention.

The drawings have been objected to because they have no reference characters and are of poor quality. Furthermore, the Examiner has noted that photographs should not be used. To overcome these objections, Applicant has enclosed a new set of drawings that are believed to be in proper form. Applicant respectfully submits that the replacement drawings do not add new matter.

Applicant respectfully acknowledges that claims 7-11 and 22-24 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. Applicant has amended claim 1 to include elements of claims 5, 6 and 7, which have been canceled, and has amended claim 20 to include elements of claims 21 and 22, which have also been canceled. Therefore, Applicant believes that as amended, claims 1 and 20 are in condition for allowance, and therefore, claims 2-4, 8-19 and 23-25 are also in proper form for allowance.

The Examiner has objected to the Specification because of minor informalities. First, the Examiner has stated that on page 1, line 2, the word “Priority” should be “Priority.” Reviewing the published application US2004/0141315 A1, Applicant does not see the typographical error indicated by the Examiner, and therefore traverse this objection to the specification. Also, the Examiner requests that Figs. 1 and 2 should be deleted from the Brief Description of the Drawings because they are prior art and were not filed with the application. Applicant has amended the Brief Description of the Drawings in accordance with this suggestion. Applicant has also amended the Specification to correct typographical and grammatical errors.

The Examiner has objected to claim 1 because of the following informalities: the phrase “the light emitting diode” should be “the light”; and the word “intense” should not be used because it is an undefined term of degree. In response to these objections, Applicant has amended the phrase “the light emitting diode” to read “the light.” Also, Applicant has deleted the term “intense” from claim 1. As amended, Applicant contends that the objections to claim 1 have been overcome.

Claim 25 is objected to because the Examiner contends that the word “bright” is a term of degree that is not defined in the specification or the claims. In response to this rejection, Applicant has deleted the term “bright” from claim 25. As such, the objection of claim 25 is respectfully traversed.

Claims 1-25 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite and omitting necessary structural relationships. Specifically, the Examiner submits that the claims omit the relationship between the flickering means and the light, and the relationship between the flickering means and the light source. In response to these rejections, Applicant has amended claims 1 and 20 to more clearly define these relationships.

Specifically, as amended, claim 1 now recites, among other things, “flickering means connected to the power source and the light configured for causing the light to flicker...” Amended claim 20 now recites, among other things, “flickering means connected to the battery and to the light source...” As amended, Applicant contends that claims 1 and 20 clearly define the structural relationships between the flickering means and the light, and the flickering means and the light source, respectively. As such, the rejection of claims 1-25 under § 112 is respectfully traversed.

Claims 1, 2, 4, 6, 14, 15, 17-20 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Andeweg (U.S. Pat. No. 3,761,702) in view of Moore (U.S. Pat. No. 6,688,752). Andeweg discloses a candle structure having a wick for burning at an upper end and a cavity formed in a lower end enclosing a light source configured for internally illuminating the candle. In one embodiment (FIG. 8), the candle is provided with a nonflammable translucent liner. Moore discloses an electronically simulated flame for use as a garden torch

formed by an array of light sources, preferably light emitting diodes (“LED”) disposed within a capped lens or housing.

In contrast, amended claim 1 of the present invention recites, among other things, “an enclosed insert configured for insertion into the internal cavity and disposed therein; a light positioned with the enclosed insert positioned within the internal cavity...a power source coupled to the light and contained in the enclosed insert within the internal cavity; a circuit board coupled to the light and power source and contained in the enclosed insert within the internal cavity.”

Claim 20 has also been amended, and now recites, among other things, “an enclosed insert configured for insertion into the internal cavity and inserted therein; a light source contained within the enclosed insert and positioned within the internal cavity; a disposable battery contained within the enclosed insert and contained within the internal cavity; a circuit board having a flickering means thereon and contained within the enclosed insert contained within the internal cavity...” Neither Andeweg nor Moore, either alone or in combination, disclose or suggest all of the features recited in amended claims 1 and 20. Specifically, neither Andeweg nor Moore disclose an enclosed insert contained within an internal cavity of the candle, where the enclosed insert includes the light, power source and circuit board.

Furthermore, there is no suggestion, incentive or inference in the references that they could be combined. Rather, combining the references would require redesign of the main components of the references. The main purpose of

Moore is to eliminate the need for a real flame by electronically simulating a realistic-looking flame through the use of an LED. However, Andeweg discloses the use of a wick so that the candle can be lit and a natural flame provided. Therefore, Applicant respectfully traverses the rejection of claims 1, 2, 4, 6, 14, 15, 17-20 and 25.

Claims 3, 5, 12, 13 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Andeweg in view of Moore as applied to claims 2 and 20, and further in view of Starry (U.S. Pub. No. 2002/0080605). The arguments stated above for Andeweg and Moore are reasserted here. Starry discloses a hand-held torch for simulating an open flame including a circuit located within an internal cavity of the torch and coupled to a lamp for randomly varying the intensity of the lamp. The lamp extends out through an opening in the cavity, is enclosed by cap 22, and is designed to simulate the look of an open flame from, for example, a cigarette lighter.

As amended, claim 1 of the present invention recites, among other things, “an enclosed insert configured for insertion into the internal cavity and disposed therein; a light positioned within the enclosed insert positioned within the internal cavity... a power source coupled to the light and contained in the enclosed insert within the internal cavity; a circuit board coupled to the light and power source and contained in the enclosed insert within the internal cavity....” None of Andeweg, Moore, or Starry, alone or in combination, disclose or suggest all of the features in amended claim 1.

Specifically, none of the references disclose or suggest “a light, power source and circuit board positioned within the enclosed insert contained within an internal cavity of the candle. Rather, all three references disclose the limitation of an external flame, either natural, as in Andeweg, or artificial, as in Starry and Moore.

Furthermore, there is no suggestion, incentive or implication to combine any of the three cited references. The objective of Moore is to eliminate the need for a real flame by electronically simulating a flame through the use of an LED that is arranged in a 2-dimensional array. On the other hand, Andeweg discloses the use of a wick so that the candle can be lit and a natural flame provided.

Starry, although electronically simulating a flame, is designed to be used as a novelty hand-held light in the manner of a conventional candle or cigarette lighter, and therefore has a compactly designed circuitry system that would have to be redesigned for configuration into Moore, with its many panels of LED arrays for simulating a torch. Also, a main objective of Starry is to alleviate the hazards of a lit match or lighter, and therefore, there would be no reason to combine Starry with Andeweg, which discloses a wick for igniting a natural flame. Therefore, Applicant respectfully traverses the § 103(a) rejection of claims 3, 5, 12, 13 and 21.

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Andeweg in view of Moore as applied to claim 14, and further in view of Kitchen (U.S. Pub. No. 2003/0198045 A1). The arguments stated above for Andeweg and Moore are reasserted here. Kitchen discloses an electric lighting device formed out of candle wax or a hollowed-out, pre-burnt candle. A wick portion sticks out of a top of the candle and includes two micro lamps that are continuously dipped in epoxy and molded to form the shape of a flame. The flame is “lit” by means of an electronic circuit located within the hollow portion of the candle.

As amended, claim 1 recites, among other things, “an enclosed insert configured for insertion into the internal cavity and disposed therein; a light positioned within the enclosed insert positioned within the internal cavity; a power source coupled to the light and contained in the enclosed insert within the internal cavity; a circuit board coupled to the light and power source and contained in the enclosed insert within the internal cavity....” None of Andeweg, Moore or Kitchen, alone or in combination, disclose or suggest the features recited in amended claim 1. In fact, Kitchen, Moore and Andeweg all appear to teach away from the features recited in amended claim 1 because they all disclose an external flame, either natural or artificial, separated from the other components of the light source, such as the power source or circuit board. Therefore, Applicant respectfully traverses the rejection of claim 16 under 35 U.S.C. § 103(a).

In view of the above amendments, the application is respectfully submitted to be in allowable form. Allowance of the rejected claims is respectfully requested. Should the Examiner discover there are remaining issues which may be resolved by a telephone interview, he is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

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